

NASD REGULATION AWARD

In the Matter of the Arbitration Between

Name of Claimants

Arthur C. and Marilyn D. Dartley

96-02405

Name of Respondents

Olde Discount Corporation

Mark D. Haft

Michael T. Manifold

REPRESENTATION

For Claimants Arthur C. and Marilyn D. Dartley ("claimants") appeared Frederick A. Nicoll, Esq. with law offices in Paramus, New Jersey.

For Respondents Olde Discount Corporation ("Olde"), Mark D. Haft ("Haft") and Michael T. Manifold ("Manifold") (collectively "respondents") appeared Ina N. Otto, Esq. in-house counsel for Olde.

CASE INFORMATION

Statement of Claim was filed on: May 31, 1996.

Claimant's Submission Agreement was signed on: May 31, 1996.

Joint Statement of Answer was filed by respondents on: August 23, 1996.

Respondents Olde, Haft and Manifold did not file properly executed Submission Agreements.

HEARING INFORMATION

Pre-Hearing Conferences:	December 10, 1996	-	1 session
	January 15, 1997	-	1 session
Hearing Dates/Sessions:	April 22, 1997	-	2 sessions
	April 23, 1997	-	2 sessions
	April 25, 1997	-	2 sessions
	May 12, 1997	-	2 sessions
	May 13, 1997	-	2 sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimants alleged that at the time their account was opened they advised Manifold that they had several securities accounts but, generally, had little knowledge of securities investments. In addition, claimants contended that they advised Manifold that their objectives were to invest conservatively in a balanced portfolio and to realize income and appreciation in value of their investments. Claimants alleged that the transactions in their account were excessive in light of their investment objectives, were engaged in for the purpose of earning commissions and were made with reckless disregard for their interests and objectives. Further, claimants alleged that, although they specifically advised Manifold that they did not want to invest in speculative securities, most of the securities traded by Manifold in their account were highly volatile and speculative and were unsuitable for their investment objectives. Claimants also contended that, notwithstanding their specific instructions that they did not want a margin account or to trade on margin, trades were being made on margin. Claimants further maintained that, although they demanded that Manifold stop trading in their account on margin and Manifold's assurances that he would take them off margin, Manifold continued to trade on margin. In addition, claimants alleged that Manifold controlled their account and made most of the trades without first obtaining their authorization or notifying them of his intention to make the trades. Claimants also contended that Olde and Haft failed to reasonably supervise and train Manifold and were, therefore, liable for the acts of Manifold.

Respondents alleged that, on their signed account application, claimants represented that they were experienced investors and that Mr. Dartley was a wealthy executive and the owner of his own company. Respondents contended that Olde supervised claimants' account and followed up with regular correspondence and that claimants never once complained about the use of margin or the activity in their account. Respondents maintained that claimants participated in Olde's SmartTrade program and that by signing the account application/agreement they represented and agreed that: 1) they were sophisticated, aggressive investors; 2) they had made independent determinations that trades were suitable for them based on their financial condition, investment objectives and other considerations; 3) they were fully aware of and accepted the risks involved in investing in securities and trading on margin; and 4) they had the financial capacity to risk the capital they invested. In addition, respondents alleged that the stocks which Manifold recommended were suitable for claimants and fit within their established risk parameters.

RELIEF REQUESTED

Claimants requested \$22,143.00 in actual damages plus commissions or mark-ups charged by Olde, losses in the value of the account and lost opportunity costs. In addition, claimants requested punitive damages in the amount of \$3,000,000.00 plus attorneys' fees, costs and fees.

Respondents requested that claimants' claims be dismissed in their entirety and that claimant be required to reimburse respondents for costs and expenses. In addition, respondents requested

that all mention of the allegations be expunged from Manifold's and Haft's U-4s.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

The panel made the following determinations concerning respondents, who did not file Submission Agreements:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Olde was a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Olde pursuant to Rule 10301 of the Code.
3. The panel found that Manifold and Haft were associated persons with a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Manifold and Haft pursuant to Rule 10301 of the Code.
4. The panel found that Olde, Manifold, and Haft were required to file Submission Agreements with NASD Regulation pursuant to Rule 10314(b) of the Code.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's request for compensatory damages is hereby denied.
2. Respondent Olde be and hereby is liable and shall pay claimant punitive damages in the amount of **ONE HUNDRED SIXTY THOUSAND DOLLARS** (\$160,000.00). The arbitrators award punitive damages in accordance with Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52, 115 S.Ct. 305, (1995) and Mulder v. Donaldson Lufkin & Jenrette, 648 N.Y.S.2d 535, 537-38 (1st Dept. 1996).
3. Respondent Manifold be and hereby is liable and shall pay claimant punitive damages in the amount of **FIVE THOUSAND DOLLARS** (\$5,000.00). The arbitrators award punitive damages in accordance with Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52, 115 S.Ct. 305, (1995) and Mulder v. Donaldson Lufkin & Jenrette, 648 N.Y.S.2d 535, 537-38 (1st Dept. 1996).

4. Respondent Haft be and hereby is liable and shall pay claimant punitive damages in the amount of **FIVE THOUSAND DOLLARS** (\$5,000.00). The arbitrators award punitive damages in accordance with Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52, 115 S.Ct. 305, (1995) and Mulder v. Donaldson Lufkin & Jenrette, 648 N.Y.S.2d 535, 537-38 (1st Dept. 1996).
5. Claimants' requests for attorneys' fees, costs and reimbursement for filing fees are hereby denied.
6. All other requests are hereby denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$200.00 non-refundable filing fee and the \$500.00 member surcharge and have assessed the following forum fees:

10 hearing sessions x \$1000.00	=	\$10,000.00
2 pre-hearing conferences x \$300.00	=	\$ 600.00
- <u>hearing session deposit</u>	=	<u>\$ 1,000.00</u>
 Total Fees Outstanding	 =	 \$ 9,600.00

Respondent Olde be and hereby is liable for and shall pay the sum of \$9,600.00, representing the total amount of forum fees outstanding.

Fees are payable to the NASD Regulation, Inc.

Arbitrators' Signatures



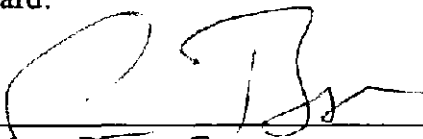
Andrew Berger, Esq.
Chairperson-Public Arbitrator

Stanley M. Ulanoff
Public Arbitrator

Jeffrey M. Haitkin
Industry Arbitrator

Date of Decision: July 22, 1997

I, **Andrew Berger, Esq.**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Laws and Rules, that I am the person described herein who executed this instrument, which is my award.



Andrew Berger, Esq.

Arbitrators' Signatures

Andrew Berger, Esq.
Chairperson-Public Arbitrator

Stanley M. Ulanoff
Stanley M. Ulanoff
Public Arbitrator

Jeffrey M. Haitkin
Industry Arbitrator

Date of Decision: July 22, 1997

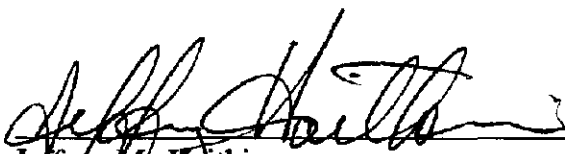
I, **Stanley M. Ulanoff**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Laws and Rules, that I am the person described herein who executed this instrument which is my award.

Stanley M. Ulanoff
Stanley M. Ulanoff

Arbitrators' Signatures

Andrew Berger, Esq.
Chairperson-Public Arbitrator

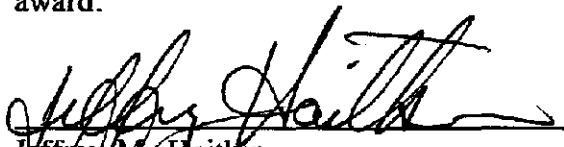
Stanley M. Ulanoff
Public Arbitrator



Jeffrey M. Haitkin
Industry Arbitrator

Date of Decision: July 22, 1997

I, Jeffrey M. Haitkin, do hereby affirm, pursuant to Article 7507 of the Civil Practice Laws and Rules, that I am the person described herein who executed this instrument which is my award.



Jeffrey M. Haitkin